

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

File No. and Project Name/Description: PDC08-015; Planned Development Rezoning from A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District allow commercial uses on a 2.17 acre site, and church uses to remain on approximately 8.2 acres, on a gross site of 10.4 acres, and subsequent permits and subdivisions.

The project is located in Council District: 9.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site.

The purpose of this notice is to inform the public of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on June 22, 2010, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **May 26, 2010**, and ends on **June 16, 2010**. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp>

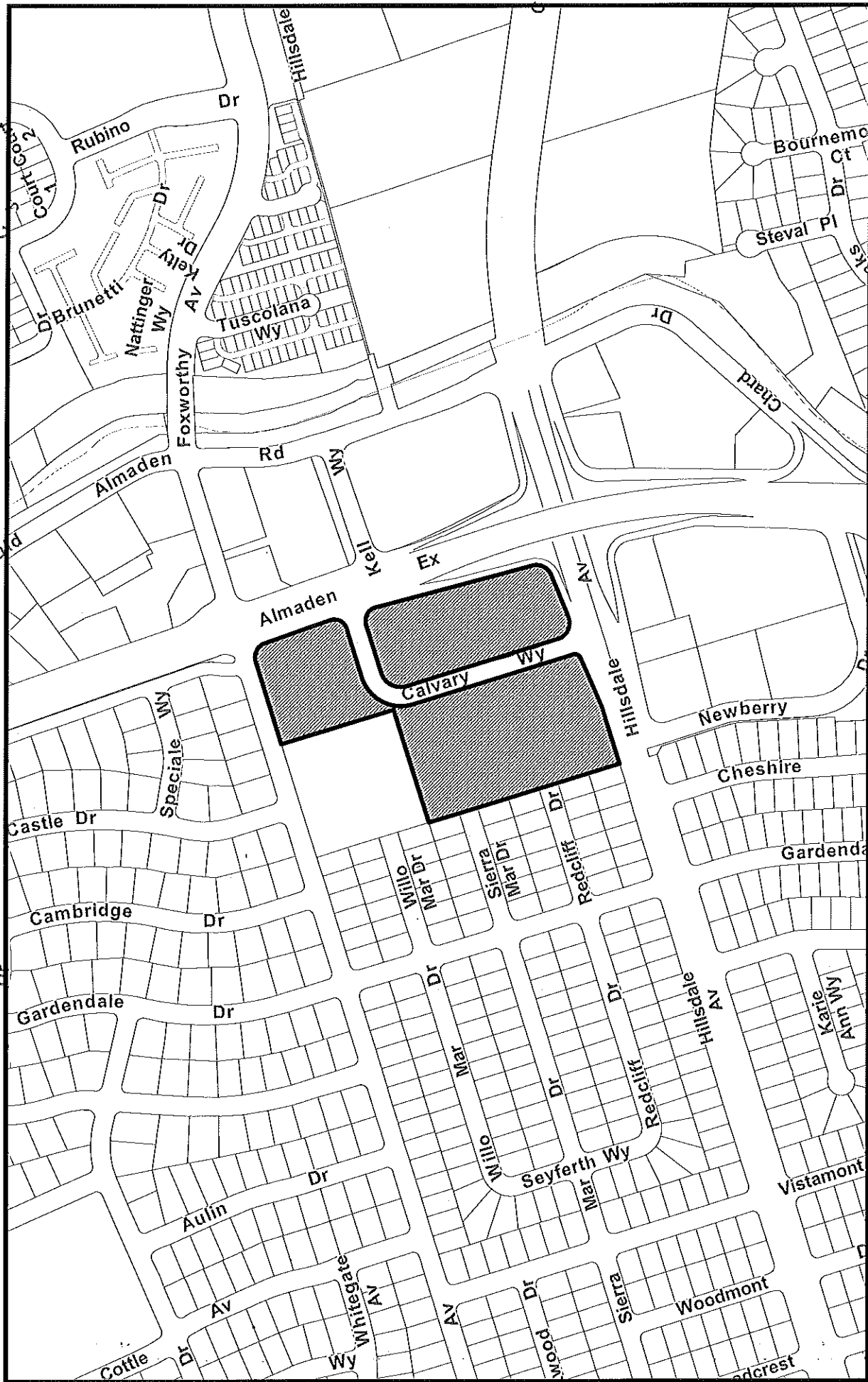
For additional information, please contact Avril Baty at avril.baty@sanjoseca.gov.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on:

5/26/2010

Idan Danilov
Deputy

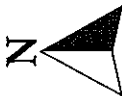


File No: PDC08-015

District: 9

Quad No: 114

Scale: 1"= 400'
Noticing Radius: 500 feet



03/07/2008

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Retail Project at Almaden & Foxworthy

PROJECT FILE NUMBER: PDC08-015, PD08-021

PROJECT DESCRIPTION: Planned Development Rezoning from A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District allow commercial uses on a 2.17 acre site, and church uses to remain on approximately 8.2 acres, on a gross site of 10.4 acres, and subsequent permits and subdivisions.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Southwest corner of Almaden Expressway and Foxworthy Avenue; 451-06-066 & -068

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION: Karen Ngo, % Sandhill Property Company, 489 S. El Camino Real, San Mateo, CA 94402

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY – The project will not have a significant impact on this resource, therefore no mitigation is required. However, the follow standard measures will be implemented:

- A. STANDARD MEASURES:** The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site.
- 1) Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
 - 2) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
 - 3) Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - 4) Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
 - 5) Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

IV. BIOLOGICAL RESOURCES –

- A. Mitigation Measure BIO 1-1a: Schedule Construction to Avoid Raptor Nesting Season.** Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February through August.
- B. Mitigation Measure BIO 1-1b: Survey For and Avoid Any Raptor Nesting Sites.** If it is not possible to schedule demolition and construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in

consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

V. CULTURAL RESOURCES --

- A. **Mitigation Measure CR-1a: Retain On-Call Archaeological Consultant.** Prior to issuance of a grading permit, the project sponsor shall retain the services of a qualified archaeological consultant with documented expertise in the investigation of prehistoric cultural resources in the Santa Clara Valley region to develop and implement a program of limited subsurface testing in order to identify or further characterize the potential to encounter subsurface cultural resources that may be present at the site. The results of the limited subsurface investigation shall be described in a report to be submitted to the City's Environmental Principal Planner. The report shall include the archaeologist's recommendations for any additional testing to be implemented prior to the initiation of site grading, as well as monitoring and any other precautionary measures to be implemented during site disturbance.
- B. **Mitigation Measure CR-1b: Monitor Grading Activities.** There shall be monitoring of site grading activities to the extent determined by a qualified professional archaeologist to be necessary to ensure accurate evaluation of potential impacts to prehistoric resources.
- 1) If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.
 - 2) If evidence of any archaeological, cultural, and/or historical deposits are found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by the *CEQA Guidelines*. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources.)
 - 3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa

Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- b) A final report shall be submitted to the City's Environmental Principal Planner prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.

- C. **Mitigation Measure CR-2: Halt Work if Paleontological Resources Are Discovered.** If any paleontological resources are encountered during site grading activities, all ground disturbances shall be halted until the services of a qualified paleontologist can be retained to identify and evaluate the resource(s) and, if necessary, recommend mitigation measures to document and prevent any significant adverse effects on the resource(s). If evidence of any paleontological resources are found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by the *CEQA Guidelines*. The paleontologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate paleontological impacts (including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources.)

VI. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

VII. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

VIII. **HYDROLOGY AND WATER QUALITY** –

- A. **Mitigation Measure HYD 1-1: The project sponsor shall comply With RWQCB Best Management Practices and City Policy for Construction-Period Stormwater Quality Protection.**

- 1) During construction, burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) During construction, earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) During construction, all exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) During construction, stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) During construction, all trucks hauling soil, sand, and other loose materials shall be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- 6) During construction, all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) During construction, vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) Prior to construction grading for the proposed land uses, the applicant shall file a "Notice of Intent" (NOI) to comply with the General Permit administered by the Regional Board and shall prepare a Stormwater Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the amendment to minimize and May 2010 Initial Study/Draft Mitigated Negative Declaration control construction and post-construction runoff. The following measures shall be included in the SWPPP:
 - a) Preclude non-stormwater discharges to the stormwater system.
 - b) Effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
 - c) Coverage of soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
 - d) Perform monitoring of discharges to the stormwater system.
- 9) The developer shall submit a copy of the draft SWPPP to the City of San José Department of Public Works for review and approval prior to construction of the project site. The certified SWPPP shall be posted at the site and shall be updated to reflect current site conditions.

- 10) The developer shall comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- 11) The developer shall restrict grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season.

B. Mitigation Measure HYD 1-2: Post-Construction Water Quality Protection

Actions. The following standard measures, based on RWQCB Best Management Practices and City of San José requirements, are required to ensure compliance with NPDES permit requirements to reduce post-construction water quality impacts:

- 1) When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction shall be filed with the RWQCB and the City of San José. The NOT shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the project site.
- 2) All post-construction Treatment Control Measures (TCMs) shall be installed, operated, and maintained by qualified personnel.
- 3) On-site inlets shall be stenciled in conformance with City requirements and cleaned out a minimum of once per year, prior to the wet season.
- 4) The property owner/site manager shall keep a maintenance and inspection schedule and record to ensure that the TCMs continue to operate effectively for the life of the project. Copies of the schedule and record must be provided to the City upon request and must be made available for inspection on-site at all times.

IX. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

X. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. NOISE –

A. Mitigation Measure NOI-1: Construction Noise Minimization. The project developer shall implement the following standard measures:

- 1) Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way shall be restricted to the hours of 7:00 AM and 7:00 PM, Monday through Friday. No construction activities shall occur on weekends or holidays because the project site is within 500 feet of a residential area.

- 2) Equip all internal combustion engine driven equipment with intake and exhaust mufflers in good condition and appropriate for the equipment.
- 3) Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- 4) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- 5) The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
- 6) Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.
- 7) Control noise from construction workers radios so they are not audible from the western or northern property line.

XII. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIII. PUBLIC SERVICES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIV. RECREATION – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **(Ending Date)**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: 5/26/2010
May 18, 2010

John Davidson
Deputy

Adopted on: _____

Deputy